

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDING CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**NOTICE OF ERRATA REGARDING
RESERVATION OF RIGHTS OF TMAXSOFT, INC.**

TmaxSoft, Inc. (“TmaxSoft”), by and through its undersigned counsel, filed a reservation of rights (the “Reservation of Rights”) on this date [ECF No. 2060]. The copy of the Reservation of Rights that was uploaded contained extraneous pages relating to an unrelated matter. An identical copy of the Reservation of Rights with the erroneously included pages removed is attached hereto as Exhibit A.

Dated: January 28, 2019
San Francisco, California

KELLER & BENVENUTTI LLP

/s/ Jane Kim

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EXHIBIT A

[Corrected Filing]

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**SEARS HOLDING CORPORATION, *et al.*,

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**RESERVATION OF RIGHTS OF TMAXSOFT, INC. WITH RESPECT TO
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACT**

TmaxSoft, Inc. (“TmaxSoft”), by and through its undersigned counsel, hereby submits this reservation of rights (the “Reservation of Rights”) with respect to the proposed assumption and assignment of the Master Software and Services Agreement dated October 25, 2017 (the “MSSA”), by and between TmaxSoft and Sears Holding Management Corporation (“Sears”), and the Statement of Work #1 dated October 25, 2017 (the “SOW,” and, together with the MSSA, the “Contract”), by and between TmaxSoft and Sears, on behalf of itself and its affiliates, to the Successful Bidder in connection with the Global Asset Sale Transaction, as set forth in the Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in connection with Global Sale Transaction [Dkt. No. 1731] (the “Assumption and Assignment Notice”).¹

1. The Contract is listed as item number 6964 on Exhibit A to the Assumption and Assignment Notice as an executory contract that may be assumed and assigned to the Buyer pursuant to the Asset Purchase Agreement.

2. Exhibit A to the Assumption and Assignment Notice lists the Contract as not having any Cure Amount associated with assumption of the Contract.

¹ Capitalized terms used but not defined herein have the meanings ascribed to them in the Assumption and Assignment Notice.

3. TmaxSoft does not object to the proposed Assumption and Assignment to the Successful Bidder of the Contract. Moreover, TmaxSoft is not aware of any monetary defaults under the Contract. As such, TmaxSoft does not object to the Cure Amount listed for the Contract in the Assumption and Assignment Notice.

4. TmaxSoft files this Reservation of Rights solely to inform the Court and the Successful Bidder of certain relevant facts and to reserve its rights with respect to the Contract and the proposed assumption and assignment to the Successful Bidder.

5. The Debtors have paid all post-petition invoices under the Contract as they came due. In addition, there are no invoices due and payable from the pre-petition period that have not been paid.

6. TmaxSoft performed work beginning in the pre-petition period and continues to perform work under the Contract. Specifically, TmaxSoft has substantially completed software implementation services for which the Debtors agreed to pay \$848,000, which amount has not yet been invoiced and is not due and payable at this time (the “Implementation Costs”). In addition, TmaxSoft has invoiced the Debtors \$120,000 relating to software subscription fees that remain outstanding but are not yet due and payable (the “Incurred Subscription Costs”). Moreover, over 32 months remain of the total subscription term commitment of 36 months under the SOW (the costs for such remaining term, the “Future Subscription Costs,” and together with the Implementation Costs and the Incurred Subscription Costs, the “Assumed Payment Obligations”).

7. As a result of the proposed assumption and assignment of the Contract to the Successful Bidder, the Successful Bidder will be obligated to make all payments under the Contract as they become due and payable, including the Assumed Payment Obligations, and to

satisfy all of the Debtors' other obligations under the Contract, and TmaxSoft reserves all rights, arguments, claims, and defenses to the extent that the Successful Bidder fails to satisfy any such obligations.

WHEREFORE, TmaxSoft reserves all rights, arguments, claims, and defenses under the Contract in connection with the assumption and assignment of the Contract to the Successful Bidder, including with respect to the Assumed Payment Obligations.

Dated: January 28, 2019
San Francisco, California

KELLER & BENVENUTTI LLP

/s/ Jane Kim

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